

1973 WL 26879 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 13, 1973

***1 re: Mandatory Continuing Education Requirement**

The Honorable John S. Herin
Secretary-Treasurer
South Carolina Board of Accountancy
P. O. Box 11376
Columbia, South Carolina 29211

Dear Dean Herin:

By letter dated August 21, 1973, the South Carolina Board of Accountancy has inquired as to its authority to promulgate regulations establishing mandatory continuing education requirements to be met by accountants licensed by the Board.

The South Carolina Board of Accountancy is empowered to prescribe rules, regulations and bylaws, in harmony with those laws established by the Legislature regulating the accounting profession. S. C. Code § 56-6. The Board has considerable leeway in establishing administrative policies to guide implementation of these laws, but it may not contravene these laws.

The Legislature, in Sections 56-12 and 56-34, S.C. Code of Laws, as amended, has established the minimum educational requirements which are required of a person wishing to become licensed to practice accounting in this State. In the opinion of this office, the Board does not have authority to enforce any increase in these educational standards through administrative regulation. Such an increase in educational standards would have to be established by the Legislature, and in considerable detail. Any broad authority given by the Legislature to the Board to adopt and enforce educational standards which, if not met, might result in a person losing his license to practice his chosen profession is subject to attack on the basis of Article 1, § 8 of the South Carolina Constitution which provides that legislative functions cannot be delegated to the executive branch of government, of which the Board is a part.

If there are further questions on this matter, please correspond.

Sincerely,

John B. Grimball
Assistant Attorney General

ATTACHMENT

Committee to Study Capital Punishment

Interim Report and Recommendations

This Committee was created as a result of a concurrent resolution (H.3643-1972) for the purpose of making a study of the laws of the State relating to capital punishment, and related matters.

The Furman Decision

The decision of the United States Supreme Court outlawing the death penalties of Georgia and Texas for the crimes of murder and rape, as applied, [Furman v. Georgia](#), 33 L.ed. 2d 346, was studied by the Office of the State Attorney General at the request

of the Committee. It had already been decided by the South Carolina Supreme Court, State v. Gibson, filed November 15, 1973, that the Furman decision made invalid South Carolina's death penalty provisions as they related to any crime.

Study reports of the Attorney General's Office indicated that the Furman decision did not invalidate the death penalty per se as constitutionally prohibited cruel and unusual punishment, but, instead, ruled that the death penalties of Georgia and Texas were invalid as applied—for varying reasons. The breakdown of the Court decision, member by member, is as follows:

Voting to uphold the Georgia and Texas statutes:

*2 Justices

Voting to invalidate the Georgia and Texas statutes:

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The Committee was advised by the Attorney General, and so finds, that the Furman decision did not declare the death penalty unconstitutional, but that the case did make it clear, inter alia, that no state may make the death penalty discretionary with a judge or jury. It is felt by the Committee that the death penalty for certain crimes, if evenly applied, and with no discretionary authority of judge or jury as to when it shall be applied, will meet the test of constitutionality.

Present State Statutes

Under present State statutes, the death penalty is provided for the crimes of murder, rape, assault with intent to ravish, kidnapping, conspiracy to kidnap, lynching, killing in duel, carnal knowledge of woman child under 16, giving information to the enemy during war, gathering information for the enemy during war, and accessory before the fact of murder. In view of the Furman decision, such penalties may not now be imposed.

History of the Death Penalty in South Carolina

Since 1912, from which time records are available, 241 persons have been executed in South Carolina, 77+% of whom were black and 22+% white. Only two women have been executed in this State. Most executions, 175 in number, were for murder. No execution has taken place in this State since 1962.

Public Hearings

The Committee has had three meetings, in addition to its organizational meeting, at which persons known to have interest in the subject of capital punishment were invited to be present and express their views. Some opposition to the death penalty for any crime was put forward. In addition to individual expressions of feeling in opposition, vigorous objection was noted on behalf of the Christian Action Council, the Council on Human Relations, and the South Carolina NAACP.

Two county sheriffs and two State circuit solicitors appeared to record their feelings and views in support of reinstatement of the death penalty for certain crimes as a necessary deterrent. Chief J. P. Strom of the South Carolina Law Enforcement Division expressed his feeling that the death penalty should be reinstated for certain crimes, as did Sheriff C. P. Alverson on behalf of the South Carolina Sheriff's Association.

Findings and Recommendations

It is the feeling of the Committee at this time that there is nothing to be gained by attempting to select specified circumstances in which the death penalty will be applied, such as murder of a police officer, prison guard, or court official, or murder by one

under sentence of life imprisonment. It is, further, the Committee's feeling that the death penalty should not be reinstated for crimes other than the taking of human life, but that the death penalty would act as an effective deterrent to murder.

*3 After consideration of all suggested alternatives, the Committee recommends to the General Assembly legislation to impose the penalty of death for the crime of murder only, regardless of circumstances, and the alternative penalty of life imprisonment for the crime of manslaughter.

Members approving the findings and recommendations: _____

Members opposed to the findings and recommendations: _____

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